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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/890,419	10/29/2001	Mario Mazza	BFE-5407US	1942
29200	7590	02/27/2004	EXAMINER	
BAXTER HEALTHCARE CORPORATION RENAL DIVISION 1 BAXTER PARKWAY DF3-3E DEERFIELD, IL 60015			MENON, KRISHNAN S	
			ART UNIT	PAPER NUMBER
			1723	
DATE MAILED: 02/27/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/890,419	MAZZA ET AL.	
	Examiner	Art Unit	
	Krishnan S Menon	1723	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 and 16-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 and 16-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claims 1-7 and 16-25 are pending.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-7 and 16-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jonsson et al (US 4,784,495) in view of Segers et al (US 5,383,324).

Jonsson teaches a cartridge (figure 4 and 7) as in claim 23, having inlet and outlet and containing sodium bicarbonate in solid form for hemodialysis as in claim 1, and a machine (see fig 5,6,8) comprising such a cartridge as in claim 16 (see abstract, col 3 lines 60-65; col 5 lines 1-18, col 11 lines 42-67).

Jonsson does not teach the powder in the cartridge as containing an acid with the bicarbonate. Segers teaches a cartridge having bicarbonate and an acid in an amount sufficient to prevent pH increase (abstract, col 5 lines 5-50, Fig 1). It would be obvious to one of ordinary skill in the art at the time of invention to use the teaching of Segers in the teaching of Jonsson to stabilize the bicarbonate as taught by Segers (col 2 line 15-col 3 line 30)

Re claims 5 and 20, both references do not teach tartaric acid. However, it would be obvious to one of ordinary skill in the art at the time of invention that tartaric

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acid is a carboxylic acid, equivalent to citric acid and others as taught by Segers (col 5 lines 35-41). (Similar species usually have similar properties. See, e.g., Dillon, 919 F.2d at 693, 696, 16 USPQ2d at 1901, 1904. See also Deuel, 51 F.3d at 1558, 34 USPQ2d at 1214).

Limitations in the rest of the instant claims are taught by Jonsson and/or Segers including the composition of acid in the bicarbonate. Re the proportion of acid and bicarbonate in claims 6,7,21-23 and 25, see col 14 of Jonsson.

Response to Arguments

Applicant's arguments with respect to instant claims have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

This action is made non final because of the new grounds for rejection (the primary and secondary references were reversed from the previous action).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Krishnan S Menon whose telephone number is 571-272-1143. The examiner can normally be reached on 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda L Walker can be reached on 571-272-1151. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Krishnan Menon
Patent Examiner


W. L. WALKER
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1700